IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23504 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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RAJUBHAI CHHAGANBHAI NAYKA - Petitioner(s)

Versus

COMMISSIONER OF POLICE SURAT CITY & 2 - Respondent(s)

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Appearance :
MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 21/12/2005

ORAL JUDGMENT

1.Rajubhai Chhaganbhai Nayka, petitioner-detenu has filed this habeas corpus petition under Article 226 of the

Constitution of India for quashing and setting aside the order of detention dated 7/10/2005 passed by the Police Commissioner, Surat. Petition was filed on 2/12/2005. On 6/12/2005, this Court (Coram:K.M.Mehta,J.) has issued rule which is returnable on 19/12/2005. On behalf of respondent, Mr.L.R.Pujari, learned APP appears so, with consent of parties, matter has been taken up for final hearing.

2.On behalf of petitioner, Mr.Kamlesh Kachhavah for Mr.D.R.Kachhavah appears. The learned advocate for the petitioner has invited my attention to the order of detention dated 7/10/2005 passed by the authority under the provisions of PASA Act. Order of committal has been passed on 7/10/2005 by which the petitioner-detenu has been detained in Nadiad Jail. The learned advocate for the petitioner-detenu has also invited my attention to the grounds supplied by the authority to the petitioner. From the grounds, it revels that only one solitary incident was shown wherein the petitioner-detenu has committed offence within the jurisdiction of Salabatpura Police Station in connection with Cr.Case No.5904 of 2005 dated 5/9/2005 under the provisions of Section 66(1)(B), 65(E)(A), 81 and 116(B) of the Bombay Prohibition Act. It is alleged that petitioner-detenu

was storing 520 bottles of country made liquor valued at Rs.15,600/- and cash of Rs.220/- (total Rs.15,820/-).

3. The authority has also stated that as petitioner-detenu is carrying on anti social activities as carrying on business of liquor and therefore, he is 'bootlegger' under the provisions of the PASA Act as the activities of the petitioner-detenu affects the public health in this behalf. Petitioner-detenu has already been released on bail and he is likely to carry the boot-legging activities. There is also danger to the public health in view of the activities of the boot-legging.

4. The learned advocate for the petitioner-detenu has submitted that alleged activities of the detenu and registration of one solitary criminal case even if found true, there is only breach of law and order. The learned counsel has submitted that for that purpose, the authority can refer the ordinary law which is sufficient and the authority ought not to have passed the order of detention under the provisions of PASA Act in this behalf. The learned counsel has further submitted that there is no cogent material placed by the sponsoring authority before the detaining authority

to arrive at the subjective satisfaction for passing the order of detention. According to the learned counsel, though there may be registration of one criminal case under the Bombay Prohibition Act against the detenu, the subjective satisfaction arrived at by the detaining authority for passing the order of detention is not valid. The authority has not relied upon credible material in this behalf. In support of the aforesaid contentions, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, reported in AIR 1989 SC 491, judgment of the Division bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in Letters Patent Appeal 223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana and judgment of the Division Bench of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of v. Police Commissioner, reported in 2000 (1) GLR 816, particularly para 21.

5. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has tried to support the order of detention on the basis of grounds stated in the order of detention. The authority has also stated that one the bail is granted, the detenu is likely to carry out

illegal activities and therefore, the order of detention is legal and valid. Considering overall fact and on the basis of registration of criminal case under the Prohibition Act, the detaining authority has passed the order of detention on 7/10/2005. It is further submitted that there was sufficient material to pass the order of detention.

6.I have considered the facts and circumstances of the case and after considering the same, I am of the view that only registration of criminal case cannot be said to be sufficient to arrive at the subjective satisfaction to the fact that the activities of the petitioner-detenu is detrimental or create breach of public order.

7.Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai

Makwana (supra) and another division bench judgment of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

8. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case under the Prohibition Act alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Prohibition Act. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the

Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta,J.) in the case of Ashokbhai Jivrajbhai and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

9.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner-detenu, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner-detenu may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be

quashed and set aside.

10.In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Rajubhai Chhaganbhai Nayka, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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